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CONTEMPORARY OPINION OF THE VIRGINIA AND KENTUCKY RESOLUTIONS

II.

THE trial of Abijah Adams[1] was conducted by Chief-Justice Dana and lasted through three entire days, the jury rendering its verdict on the morning of the fourth day.[2] Sullivan, the attorney-general, presented the case of the Commonwealth. The prosecution[3] as he presented it "had no connection with the Sedition Act of Congress," but was "under the common law of the State." The articles set forth in the indictment were libels against the General Court of Massachusetts, for "the common law of the country, which was common reason, prohibited such outrages" albeit there was no statute defining libels upon the government. In support of this doctrine the attorney-general argued that the offense described in the indictment was indictable by the common law of England. To obviate the objection that such an action would be an infringement of the freedom of the press, Blackstone's definition, that liberty of the press meant only freedom from restraint prior to publication, was appealed to as authoritative. If the offense charged in the indictment was libellous by the common law of England, the conclusion that it was punishable in Massachusetts was easily reached. The first settlers in Massachusetts brought that doctrine to America with them as a part of the common law.

For the defense, Messrs. Whitman and George Blake presented three lines of argument: 1. The defendant, being merely employed in the office of the *Chronicle*, was not the real culprit, if there be one; 2. The matter set forth in the indictment was not libellous; 3. Under the constitution of Massachusetts no indictment can be maintained for a libel against the government of the state. Two of these lines of argument possess great interest. The second shows incidentally the opinions of leading Massachusetts Republicans in regard to the constitutional doctrines of the Virginia and Kentucky Resolutions, as expressed in a carefully considered argument before

[1] In the following account of the trial the elaborate argument, published in the *Chronicle* from April 11 to May 2, 1799, is followed unless some other authority is cited.

[2] *Massachusetts Mercury*, March 8, 1799; *Columbian Centinel*, March 6, 1799.

the highest court of the state. The third places in a clear light the extreme doctrines which Federalist judges of 1799 held in theory and sought to put into practice against Republicans who had sufficient courage to proclaim openly their political convictions.

In developing the second line of argument the attorneys for the defense pointed out that the articles upon which the indictment was based could not be regarded as libellous, except by a process of inference and deduction. If these articles contained the charge that the members of the legislature were guilty of treason, it was only as a conclusion, deduced or inferred from certain constitutional principles. The charge of treason was, therefore, not an impeachment of the individual members of the legislature, but of their principles. Even supposing it a reflection upon the legislature and entirely unwarranted, it was only an expression of opinion, and no man should be punished for mere error in opinion, especially if expressed in connection with the premise from which it was drawn.

Realizing, apparently, that about the only reply that could be made to this argument was to assert that the conclusion was wanton and arbitrary because it had no necessary connection with the premise, the attorneys for the defense proceeded to argue that the conclusion was a fair deduction from the premise. Their argument upon this head began with the assertion that since the formation of the federal government no question "had been the cause of more dissension, than the precise extent of the freedom, sovereignty and independence of the States." Citing the controversy over the suability of the states as an evidence that the line between state and federal sovereignty was not yet sharply drawn, they further contended that for the present case it was not necessary to consider the question whether a state legislature had authority to decide upon the constitutionality of any act of Congress, but only to indicate that in some cases "the existence of such authority would not only be manifest, but the necessity of its existence clear and indispensable." In evidence of this proposition, which is in effect almost the doctrine of the Virginia and Kentucky Resolutions, a hypothetical case was cited wherein the reserved rights of the states would indubitably be violated by a law of Congress; in such a case the state legislatures could not be better employed than in protesting, since a protest might lead Congress to repeal its act. Exactly what would happen in case Congress failed to heed the protest, the attorneys did not indicate. Upon that point they were content to remark, that it was admitted that the state legislatures were not the constitutional tribunals for determining the validity of federal laws "in any other cases than those in which their own sovereignty or power are directly or im-

mediately involved." Even in such cases their decisions were not to be regarded as binding upon the federal government. Having thus reached the point at which all state-sovereignty arguments fail, the matter was not pushed to any definite conclusion. No way out of the dilemma was suggested; but the failure of the logic did not prevent further argument intended to prove that the states must possess the right "to maintain within their respective limits all powers, rights and liberties appertaining to them." Summing up the whole matter of the reasonableness of the conclusion from the given premise, the attorneys for the defense said: "On the whole, whatever may be the merits of the question, there appears to be some little force in the sentiment contained in the Virginia Resolutions: 'that in cases of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the states, who are parties thereto, have the right and are in duty bound, to interpose, for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights and liberties appertaining to them.'"

The second line of argument having shown that the leading Republican newspaper of New England and two of the most prominent Republican lawyers of Boston accepted all or nearly all of the constitutional doctrines of the Virginia and Kentucky Resolutions, we may turn to the third line of argument to learn how the Federalist chief-justice defined liberty of the press for Republican newspapers. The defense maintained that under the constitution of Massachusetts there could be no such thing as a libel upon the government of the state. Admitting that the English practice had been correctly stated they contended that the same rule did not prevail in Massachusetts. The whole body of the common law of England had not been adopted in Massachusetts; an exception had been made by the constitution of such parts as are "repugnant to the rights and liberties contained in this constitution." The question whether the English common-law rule was repugnant to the constitution was a fair problem for the court and the jury. To assist the court and the jury in determining that problem the defense made the point that no statute had been made by either the colony or the province for punishing such libels, denying also that the cases cited by the attorney-general were in point. Making the further admission, for the sake of argument, that the English rule had prevailed in Massachusetts prior to the Revolution, the defense urged that the events of the Revolutionary period had effected a change in the common law upon the subject of libels against the government. Blackstone's definition, that liberty of the press consists only of free-

dom from restraint prior to publication, was unsuited to the spirit of American institutions. As a better definition of liberty of the press the defense offered to read a passage from John Adams's *Canon and Feudal Law*.[1] This definition the chief-justice refused to hear, finding excuse that it was published anonymously, that "it was unusual and improper to submit any matter to the jury unsupported by regular authority," and that speculative productions, written at a period of disorder and commotion, "however respectable and illustrious the author," should not be admitted.

After the refusal of the chief-justice to listen to any definition of liberty of the press other than that which obtained in England, one would like to know in what terms he defined that subject to the jury. Presumably he adopted the English rule without material qualification, for a verdict of guilty was rendered in accordance with that principle. The prisoner was sentenced to thirty days' imprisonment, payment of the costs of his trial, and to make a recognition in the sum of five hundred dollars to keep the peace and maintain a good behavior for one year.[2] Before sending the prisoner away to jail the chief-justice seized the occasion to deliver a long harangue, in the course of which he declared himself emphatically upon what he called "the monstrous positions" of the Virginia and Kentucky Resolutions.[3]

The imprisonment of Abijah Adams was the most flagrant but not the only instance of the persecution of Massachusetts Republicans for their attitude against the reply to Virginia and Kentucky. Both of the Republican legislative leaders suffered much annoyance at the hands of Federalist zealots. The incidents, though trivial in themselves, are interesting for the light which they throw upon the methods by which the Federalist leaders retained their control over Massachusetts. Bacon, the Republican senator who had unaided opposed the passage of the reply, was held up to ridicule in the Federalist press as the Solitary Nay, a character altogether too contemptible for punishment.[4] Being defeated for re-election to the Senate, Bacon offered himself as a candidate for the House in the town of Stockbridge. A few days before the election a communication appeared in the *Centinel*,[5] professing to recount an incident in Bacon's early life which the voters of Stockbridge ought to be in-

[1] This passage is in John Adams, *Works*, III. 456–459.

[2] Manuscript records of the Massachusetts Supreme Judicial Court, Vol. 1799, folio 183, No. 8191. The costs amounted to at least thirty-two dollars and thirty-one cents.

[3] *Columbian Centinel*, March 30, 1799.

[4] *Columbian Centinel*, April 27, 1799. This article was copied by nearly all the Federalist papers of the state.

[5] April 27, 1799.

formed of. According to this correspondent, Bacon while minister of the Old South Church in Boston in pre-Revolutionary days had owned two slaves, a husband and wife. Though Bacon had received them into his church-fellowship, when he perceived the likelihood of his losing them by action of the state he sold the husband, who was transported from Massachusetts, never to see his wife again. "This," says the correspondent, "is the man who stands for liberty and equality." Bacon had no difficulty in proving the story false,[1] but the *Centinel* took no notice of that fact.

Dr. Aaron Hill, the Republican leader in the House, lived in Cambridge. One night not long after the end of the session of the General Court, a Federalist mob, composed, the *Chronicle* insinuates, of students from Harvard College, manifested their disapprobation of Dr. Hill's course upon the reply to Virginia and Kentucky by shattering the windows and casements in his house. This outrage, however, redounded to the confusion of the Federalists. When the election for members of the General Court came on, about a month later, the Federalists made Hill and his course upon the reply to Virginia and Kentucky the issue at the largest town-meeting Cambridge had ever known. Hill was returned by three majority, enough Federalists casting their votes in his favor on account of the outrage to secure his election.[2]

It is plain, then, that both the Federalists and the Republicans of Massachusetts took the same general attitude toward the protest and remedy of the Virginia and Kentucky Resolutions as did the members of their respective parties in the Middle States. The Federalists manifested an utterly imperious and intolerant demeanor towards their Republican opponents. The imprisonment of Adams indicates that the Federalists were ready upon the slightest provocation to treat opposition to the policy of the administration, whether federal or state, as a crime. That case certainly does much to explain why Jefferson and other Republican leaders could fear that republican institutions were about to be overthrown.

The Rhode Island newspapers furnished their readers with no original thoughts upon the Virginia and Kentucky Resolutions and with but little information about the manner in which the legislature of the state handled them. The legislature met at East Greenwich on February 18, and nearly all that can be learned of their proceedings for the entire session is that before adjourning on March 9 two sets of resolutions were passed in reply to Virginia and Kentucky.

[1] *The Western Star* (Stockbridge), May 20, 1799. A. A. S. This was a Federalist paper.

[2] *Columbian Centinel*, May 8, 1799; *Chronicle*, April 11, 1799.

These replies are identical, except in the matter of dates and names, and the vote upon them, unanimous in the Senate and lacking but one of unanimity in the House, would indicate that there was no debate.[1] The brevity of the replies, according to the *Providence Journal*, is due to the fact that other states having entered fully into the reasons for dissenting from Virginia and Kentucky nothing was thought necessary but "an expression of opinion, and of a few general principles on which that opinion was founded."[2]

In Connecticut the newspapers printed so many documents and articles bearing upon the Virginia and Kentucky Resolutions that their readers must have become quite familiar with them. But among these articles I have been able to find no original discussions and but very little about the action of the state legislature upon the resolutions. While the legislature was in session none of the Connecticut papers published any accounts of its proceedings; after it had adjourned, the *Connecticut Courant* had a long account, evidently written by a member.[3] This article, copied by all the other papers, constituted their only account of legislative affairs. One paragraph in this article contains all that can be learned about the replies to Virginia and Kentucky, save what is shown by the documents themselves.

Opposition to these replies was expected by the Federalists, for there were some fifteen or sixteen "Jacobins" in the House, though some of these were "half-way characters." But the answers met with no resistance, most of the Republicans absenting themselves during the vote. The reply to Virginia[4] passed both houses unanimously, while that to Kentucky encountered but two negative votes in the House and none in the Senate. The reply to Kentucky[5] declares that attempts to form a combination of state legislatures for the purpose of controlling the policy of the federal government are foreign to the duties of state legislatures, contrary to the principles of the Constitution, and calculated to introduce anarchy by menacing the existence of the Union. But were the assembly permitted to pass upon the measures of the federal government, it would pronounce the Alien and Sedition Laws constitutional and meriting its entire approbation. In this reply, as also in that to Virginia, the Federalist members of the Connecticut assembly expressed their dissent to both the protest and the remedy of the

[1] *The Newport Mercury*, March 5, 1799. H. U. *Acts and Resolves*, February session, 1799, pp. 17, 18; Elliot's *Debates*, ed. 1836, IV. 558.

[2] March 6, 1799. H. U.

[3] June 6, 1799. A. A. S.

[4] Elliot, IV. 564.

[5] *Infra*, pp. 247, 248.

Virginia and Kentucky Resolutions, while the Republicans by their absence showed that they could not accept it entire.

New Hampshire, as regards the Virginia and Kentucky Resolutions, was the banner state of Federalism. The Federalist newspapers there added little if anything to the discussion of the principles involved, but their comments show a determined front. The *Federal Miscellany*, of Exeter,[1] accepting the Virginia Resolutions as a threat to arm the militia of Virginia against the federal government, retorted that an allusion to force was improper in a discussion upon matters of government, but Virginia will find her sister states "as able in the field as in the cabinet."

When the resolutions of Virginia and Kentucky reached Governor Gilman the winter session of the legislature was over and, in consequence, the legislative reply of New Hampshire was delayed until June. On the fifth of that month Governor Gilman submitted the resolutions to the legislature, remarking that they appeared to him "of a very extraordinary nature," but that delicacy towards sister states prevented him from making any observations upon them.[2] But the legislature evidently did not share in the governor's feeling on the point of delicacy, for it promptly and decisively expressed its observations in very blunt fashion. One reply,[3] addressed to both Virginia and Kentucky, sufficed for the declaration that if the legislature of New Hampshire "for mere speculative purposes" were to express an opinion it would be that the Alien and Sedition Laws were constitutional and "highly expedient"; and that the state legislatures were not the proper tribunals to decide upon the constitutionality of laws enacted by the federal government, that duty being "properly and exclusively confined to the judicial department." This reply, an emphatic demurrer to both the protest and remedy of the Virginia and Kentucky Resolutions, was passed unanimously by both houses. None of the New Hampshire newspapers give any accounts of the proceedings of the legislature upon this reply and, in consequence, I am unable to offer a satisfactory explanation of the unanimity. The attitude of the Republicans elsewhere warrants the conclusion that the Republicans of New Hampshire could not have entirely endorsed the reply to Virginia and Kentucky. Being few in number, probably they absented themselves, as in Connecticut, or remained silent.

Of the replying states Vermont was the most tardy. Its General Assembly did not meet until October 10, 1799, but the spirit of Vermont Federalism, as connected with the Virginia and Ken-

[1] February 13, 1799. H. U.

[2] *Courier of New Hampshire*, June 15, 1799. H. U.

[3] Elliot, IV. 564–565.

tucky Resolutions, manifested itself earlier. In May there was a rumor that Matthew Lyon, the leader of the Vermont Republicans, who was then serving out a sentence under the Sedition Law, contemplated removal to Kentucky. This announcement led to a characteristic paragraph in a Federalist paper published at Vergennes.[1]

"The passage of the great beast [Lyon] and his whelps to that land of paddyism (Kentucky) would be a curious spectacle for the northern and middle states. To drain this state of one thousand families of *his followers* might be a clear saving of as many halters to this Commonwealth, as well as much expense to towns in providing for the poor, taking up vagrants, would save the girdling of orchards, and still leave the state as much good order, morality and piety as though no such departure had ever happened! Such an addition to Kentucky must be very interesting, and give new support to future resolutions in their legislature."

When the legislature met, Governor Tichenor submitted the resolutions, observing that, as other states had treated them to "severe comment" or "marked contempt," he had not the slightest hesitation in predicting that the Vermont legislature would express its disapprobation of them in a marked degree. The legislature, in reply, told the governor to be assured that the resolutions would be considered and given the treatment which they merited.[2] On October 14 the assembly requested the governor and council to join them a week later for the purpose of considering the resolutions of Virginia and Kentucky.[3] The invitation was accepted, and three meetings in grand committee were held upon the subject.[4] At the first of these meetings a sub-committee of five were appointed to formulate suitable replies; these were reported at the third meeting and accepted by the grand committee.[5] Subsequently the Council and the assembly adopted the replies separately: in the Council both were adopted unanimously; in the assembly the reply to Virginia received 104 votes against 52, that to Kentucky 101 to 50.[6]

The reply to Virginia[7] was decisive and, considering its brevity, remarkably comprehensive. The reply to Kentucky,[8] on the other

[1] Reprinted by the *Albany Centinel*, May 17, 1799. H. U.

[2] *Records of the Governor and Council of Vermont*, IV. 512–513.

[3] Extract from the Journal of the Assembly given in the *Records of the Governor and Council of Vermont*, IV. 228.

[4] *Records of the Governor and Council of Vermont*, IV. 231, 233, 240.

[5] Extract from the Journal of the Assembly given in the *Records of the Governor and Council of Vermont*, IV. 526.

[6] *Records of the Governor and Council of Vermont*, IV. 242, 529.

[7] Elliot, IV. 565.

[8] *Records*, IV. 526–529.

hand, is long and elaborate, deserving to rank in importance with that of Massachusetts. It is not, like the reply of Massachusetts, a consideration of the general principles involved, but takes up the resolutions of Kentucky one after another and makes reply to them. The fundamental principles of the resolutions of Kentucky contained in the opening declaration are thus epitomized: "That the states constituted the general government, and that each state as party to the compact, has an equal right to judge for itself as well of the infractions of the Constitution, as of the mode and measure of redress." The entire contemporary discussion of the Virginia and Kentucky Resolutions brought out no more significant comment than the answer of Vermont to the doctrine of Kentucky. "This cannot be true. The old confederation, it is true, was formed by the state Legislatures, but the present Constitution of the United States was derived from an higher authority. The people of the United States formed the federal constitution, and not the states, or their Legislatures. And although each state is authorized to propose amendments, yet there is a wide difference between proposing amendments to the constitution, and assuming, or inviting, a power to dictate and control the General Government." This brief reply of Vermont is the only one in all of the answers made by the states which, like the first resolution of Kentucky and the third of Virginia, goes directly to the fundamental question, the nature of the federal union. The declaration of Vermont, properly understood, is not free from all ambiguity on the subject. It does not declare so decisively as to admit of no doubt that the legislature of Vermont thought of the Constitution as ratified by the people of the United States acting *en masse*, instead of as states. But it leans strongly in that direction and absolutely denies the correctness of the conclusion drawn by Kentucky from the opposite premise.

The second resolution of Kentucky pronounced the Alien and Sedition Laws "altogether void and of no force" as contrary to the principles of the Constitution, Amendment X. declaring "that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or the people." To this Vermont rejoined that Kentucky misconstrued and misapplied the amendment, but that even if one adopted the construction which Kentucky put upon that amendment, its conclusion was not warranted. Under that conclusion all the acts of Congress would be brought in review before the state legislatures, while the Constitution of the United States provides that "Congress shall have power to make all laws which shall be proper for carrying into execution the government of the United States."

The third and fourth resolutions of Kentucky were disposed of in the reply of Vermont in a manner which was doubtless entirely satisfactory to the Federalists of the state, but which will not commend itself to candid and unbiassed minds. Kentucky had asserted that the Alien and Sedition Laws were unconstitutional because they infringed upon the reserved rights of the states. Vermont, while purporting to reply to the argument of Kentucky, shifted the ground from the operation of the laws upon the reserved rights of the states to their operation upon the rights of individuals. Thus ignoring the real question, Vermont argued that the Sedition Law was constitutional because a similar law was constitutional in Vermont and the Alien Law also because aliens have no rights under the Constitution.

The remainder of the reply is not so important. The sophistry of the fifth Kentucky resolution was correctly declared and the particular feature of the Alien Act which Kentucky had denounced in its sixth resolution was defended. One omission should be noted. Kentucky in its seventh resolution had made a remarkably cogent argument against a latitudinarian construction of the general-welfare clause of the Constitution. This resolution was the only one to which Vermont failed to reply. The concluding words of Vermont are important as evidence of the spirit in which its reply to Kentucky was framed. Kentucky had remarked in the course of its argument, "that confidence is everywhere the parent of despotism." To this Vermont rejoined in a general declaration which carried with it a concrete application. "The experience of ages evinces the reverse is true, and that jealousy is the meanest passion of narrow minds, and tends to despotism; and that honesty always begets confidence, while those who are dishonest themselves, are most apt to suspect others."

Upon replies so interesting as those of Vermont it is much to be regretted that we have not a full report of the discussion, particularly as the vote in the assembly indicates that there was strong opposition to their adoption. But information is not wholly lacking; on the last day of the session thirty-three members entered upon the journal of the assembly a statement of the reasons for their votes against the replies.[1] From this statement we learn that the reply to Virginia as reported by the sub-committee denied to the state legislatures even the right to deliberate upon the constitutionality of federal legislation, but that this extreme doctrine was stricken out upon the motion of a majority member. The minority objected to

[1] For the text of their statement see pp. 249–252, *post*. A summary and extract are given in *Records*, IV. 529.

the replies because they regarded the Alien and Sedition Laws as both inexpedient and unconstitutional. Unfortunately the statement does not make equally plain the attitude of the minority regarding the other important feature of the Virginia and Kentucky Resolutions, namely, their doctrine of the proper remedy for unconstitutional federal legislation. The minority declared that they could not assent to the view advanced by the majority, that the Virginia and Kentucky remedy was an unconstitutional assumption of power not belonging to the state legislatures. Without stating explicitly its own theory the minority alluded to itself as "advocating the power of each state to decide on the constitutionality of some laws of the union;" this right it limited to laws which "infringe on the powers reserved to the states, by the tenth article of the amendments to the constitution." Nothing was said to indicate the manner in which this right was to be exercised, and an express disclaimer was entered against "an intent to justify an opposition, in any manner or form whatever, to the operation of any act of the union." Such opposition would be "rebellion, punishable by the courts of the United States." From these somewhat contradictory declarations the only conclusion which we are warranted in drawing is that the Vermont Republicans agreed in part at least with their Virginia and Kentucky brethren upon the remedy for unconstitutional federal legislation. Upon a yet more fundamental point, the nature of the federal union, their agreement was complete; the Vermont minority declared "that the states individually, compose one of the parties to the federal compact or constitution."

None of the states south of Virginia sent replies and but little can be learned about the cause of their failure to do so. The legislature of North Carolina was in session when the Kentucky Resolutions reached that state but adjourned before those of Virginia arrived. The Kentucky resolutions were laid before it, but the few notices of its action upon them are so ambiguously phrased that the precise action taken cannot be ascertained. In the Senate the Kentucky Resolutions were certainly read and laid upon the table, where they were permitted to remain without any definite action upon them.[1] About the same time the resolutions were sent to the House, but whether that body endorsed them and sent them to the Senate or took into account the action of the Senate and took no action itself cannot be ascertained.[2] The fact that there was a Republican majority in the lower house and that it passed a resolution calling upon Congress to repeal the Alien and Sedition Laws

[1] *Albany Centinel*, January 22, 1799. H. U.
[2] *Ibid.*

would point to the former course as the more probable. The few notices which I have been able to collect regarding the session of this legislature in the fall of 1799 make no mention of any action upon either set of resolutions.

In South Carolina the legislature adjourned on December 21,[1] too early to have received either set of resolutions. Before it met again in November of 1799 the papers of the state had made the people familiar with the resolutions. On November 28, Governor Rutledge submitted both sets of resolutions to the legislature, but made no comments upon them.[2] Within five days of the end of the session the legislature had taken no action upon them, but beyond that point I am unable to trace the course of legislative proceedings in South Carolina. After the legislature had adjourned the *Aurora*[3] contained an item stating on the authority of a member of the legislature that the session was so short that it left no time for action in the matter, but had any action been taken it would have been favorable. Making allowance for the bias of the *Aurora*, we may conclude that probably the South Carolina legislature failed to act upon the resolutions of Virginia and Kentucky because it sympathized with the protest against the Alien and Sedition Laws but scarcely knew its own mind upon the matter of the remedy.

About the state of public opinion in Georgia and Tennessee even less can be learned than of the Carolinas. The legislature of Georgia was in session in February 1799 and certainly took no formal action expressing disapproval of the resolutions. One item, to be found in many Northern papers, states that the legislature postponed consideration of the resolutions for one session.[4] Although this is not verified by other items, I am inclined to think that it is correct. At the next session, I can find no mention of any action in the matter, though the notices of the proceedings of the legislature are quite complete. Probably no action was taken. For Tennessee nothing can be said except that its legislature sent no reply to Virginia and Kentucky. Various items appeared in the Northern papers purporting to relate what action Tennessee had taken, but they are conflicting and none of them bear any marks of credibility.

From the detailed study which has preceded, the following general conclusions seem warranted:

1. North of the Potomac the Federalists, being in a majority in every state, secured emphatic expressions of disapproval for the Virginia and Kentucky Resolutions, either by legislative replies or

[1] *Carolina Gazette, passim.* Wisc. H. S.

[2] *City Gazette and Daily Advertiser* (Charleston), December 10, 1799. H. U.

[3] January 30, 1800. H. U. The sessional *Acts and Resolves* give no evidence of action.

[4] *The Political Focus* (Leominster, Mass.), April 11, 1799. H. U.

other legislative action intended to be even more emphatic than a formal reply. South of the Potomac, where the Republican strength was rapidly rising, it had not yet been sufficiently consolidated to secure expressions of approval for even a portion of the resolutions; but it was strong enough to prevent any formal disapproval of them, as in the North.

2. The replies, formulated everywhere by the Federalists, declare the Alien and Sedition Laws both expedient and constitutional, thus constituting a most emphatic counter-protest to the protesting feature of the Virginia and Kentucky Resolutions. The replies further assert, as regards the remedy hinted at by Virginia and Kentucky, that the states have no right to pass upon the constitutionality of laws enacted by Congress; and nearly all of them, in terms more or less direct, point to the federal judiciary as the proper authority to decide upon the constitutionality of federal laws.

3. The entire reasoning of both the Virginia and the Kentucky Resolutions of 1798 was grounded upon the assertion, plainly expressed in each set of resolutions, that the Union was the result of a compact to which the states were parties. This fundamental doctrine received no attention in any of the replies or the discussions over them, so far as the latter have been preserved, except in the reply of Vermont to Kentucky. It is probable that this assertion of Virginia and Kentucky was more generally accepted in 1799 than it was later; and it is certain that neither the Republican who asserted it nor the Federalist who denied it had any adequate conception of the results to which a logical development of the doctrine would lead.

4. The Republicans, wherever their attitude can be learned, fully endorsed the protesting features of the Virginia and Kentucky Resolutions and accepted in part the reasoning upon which the remedy was grounded, though few went to the full extent of the Virginia and Kentucky doctrines.

When the Kentucky legislature sent forth its resolutions the excitement in that state did not entirely cease. George Nicholas, who with Breckenridge had been the leader of the movement in Kentucky, published a pamphlet early in January 1799 for the purpose of putting the case of Kentucky in proper light. It bore the title *A Letter from George Nicholas of Kentucky to His Friend in Virginia*, and though dated three days prior to the passage of the Kentucky resolutions was really a defense of them. Nicholas denied most emphatically that the people of Kentucky contemplated separating from the Union,[1] and asserted that there need be no fear

[1] Pp. 21–24. H U.

of improper opposition to the federal laws on the part of Kentucky. The laws of which Kentucky complained were of two sorts: one kind was constitutional, but impolitic; the other was unconstitutional and impolitic. The former Kentucky would remonstrate against, but would obey promptly as long as they remained in force. Although the latter might be treated as dead letters, "yet we contemplate no means of opposition, even to these unconstitutional acts, but an appeal to the *real laws* of our country."[1]

This letter by George Nicholas brought out a rejoinder, which was issued at Cincinnati by a writer who signed himself, "An Inhabitant of the North-Western Territory."[2] After a most elaborate defense of the whole policy of the federal administration, this writer called upon unprejudiced men to read the resolutions of Clark County, those of other counties throughout the state, and especially the resolutions of the Kentucky legislature, and then to say whether all these did not tend directly towards securing a dissolution of the Union. In fact Kentucky had refused obedience to the federal laws and so far as it could do so it had dissolved the Union.[3] Then taking up Nicholas's classification of the objectionable laws, the writer argued that the only right of a state legislature touching either class of laws was the right of remonstrance. The second might be brought before the supreme federal judiciary, which is the constituted authority for determining such matters.[4]

Aside from what can be learned from these two pamphlets, little can now be ascertained about the attitude of the people of Kentucky prior to the meeting of the legislature in November, 1799. But the pamphlets, both of which appear to have been well known in the state, are sufficient to show that the feature of the resolutions of 1798 upon which the people of Kentucky had not already expressed their opinions was clearly put before them. Knowing this we may conclude that the legislature elected that fall represented the deliberate opinion of the people of Kentucky upon the remedy hinted in the resolutions of the previous year.

In Virginia the questions raised by the resolutions of 1798 were constantly before the people until after the elections of 1800. Copies of the resolutions and of the address prepared by the legislature to accompany them were sent to each county in the state. To counteract the effect of the address the Federalist minority in

[1] P. 31.

[2] *Observations on a Letter from George Nicholas of Kentucky to his friend in Virginia.* By an inhabitant of the North-Western Territory. Cincinnati, February 14, 1799. H. U.

[3] P. 29.

[4] Pp. 37–39.

the legislature issued a protest.[1] This protest is said to have been written by John Marshall, but it contains little in reply to the remedial doctrines of the Virginia resolutions. The main object of the protest, as its title indicates, was to demonstrate the constitutionality of the Alien and Sedition Laws. Throughout the state the address of the legislature and the protest of the minority were variously received, according to the political sympathies uppermost in the community. In Greenbrier County the court of justices tore the copies of the legislative address into pieces and trampled them under foot;[2] Fairfax County returned its copies to the governor,[3] while Norfolk borough[4] and Pittsylvania County[5] adopted resolutions against the action taken by the legislature. In the Republican counties the address of the legislature was publicly read and the copies distributed to those in attendance upon the court.

The Federalist campaign against the resolutions of 1798 began at once and was never permitted to lag. The circulation of the minority protest was followed up by copying from the Federalist papers outside of the state nearly all that was said or done against the resolutions of the legislature.[6] As the elections approached appeal after appeal to redeem the state went forth from the Federalist leaders. In nearly all of these appeals the resolutions of the preceding year are directly or indirectly made the issue for the decision of the people.

The most elaborate of these appeals was a pamphlet of fifty-six pages, issued as early as February by a citizen of Westmoreland County, who signed himself "Plain Truth."[7] After setting forth the advantages of the Union and the evils which would certainly result from dismemberment, Plain Truth maintained that union was possible only under the existing government. This premise he followed up by a consideration of certain measures which he thought indicated a desire on the part of their promoters to bring about disunion. These measures were, of course, the Virginia Resolutions of 1798. In considering these measures Plain Truth went directly to the fundamental proposition of the third Virginia resolu-

[1] *The Address of the Minority in the Virginia Legislature to the People of that State, containing a Vindication of the Constitutionality of the Alien and Sedition Laws.* Pamphlet, H. U.

[2] *Columbian Mirror* (Alexandria), April 23, 1799. H. U.

[3] *Massachusetts Spy*, April 17, 1799. A. A. S. *Calendar of Virginia State Papers*, IX. 14.

[4] *Calendar of Virginia State Papers*, IX. 20.

[5] *The Virginia Federalist*, September 14, 1799. A. A. S.

[6] A good example of this class of articles will be found in one copied by the *Windham Herald*, April 12, 1799, from the *Virginia Federalist*.

[7] *Plain Truth: Addressed to the People of Virginia.* B. A.

tion, that the Union was the result of a compact to which the states were parties. "This assertion," said Plain Truth, "is believed to be untrue in fact, and dangerous in principle. The paper from which the powers of the federal government *result*, and which is termed by the resolutions, a *compact*, is the constitution of the United States. To this constitution the state governments are not parties in any greater degree than the general government itself. They are in some respects the agents for carrying it into execution, and so are the Legislature and Executive of the Union; but they are not parties to the instrument, they did not form or adopt it, nor did they create or regulate its powers. They were incapable of either. The people, and the people only were competent to these important objects."[1] In support of this doctrine, Plain Truth argued that the states were parties to the old confederation, but that the present federal Constitution was formed to remedy that defect and "was proposed, not to the different state governments, but to the people for their consideration and adoption." As evidence of this difference between the confederation and the present federal union, he cited the language of the preamble of the Constitution. "The Constitution was in truth what it professes to be—entirely the act of the people themselves. It derives no portion of its obligation from the state governments. It was sanctioned by the people themselves, assembled in their different states in convention. They acted in their original, and not in their political character."[2] Having shown to his satisfaction that the people were the parties to the Constitution, Plain Truth made his point against the resolutions of Virginia by demanding, "Why are the *people* excluded from our view, and *states* substituted in their places?" The motive which inspired the legislature to make this claim for the states, Plain Truth argued, was a desire to arrogate to itself power which properly belonged to the people.[3] This argument of Plain Truth's was, of course, an unfair one, since it was based on a mistaken reading of the third Virginia resolution. Plain Truth treated the term *states* in the resolutions as if it was synonymous with the term *state governments*, whereas in the resolutions the term *states* means the people of each state. The treatment by Plain Truth of the fundamental doctrine of the third Virginia resolution is none the less instructive because it is fallacious. It shows plainly that the issue of national or state sovereignty, as raised by the Virginia Resolutions, was not overlooked in the Virginia campaign following their adoption. It indicates that the idea of state sovereignty was plainly put before the people of Virginia for their endorsement or rejection,

[1] P. 19. [2] P. 20. [3] P. 20.

though the details of the doctrine were not so clearly formulated as later.

The pamphlet by Plain Truth is, perhaps, as good an illustration as could be chosen to exemplify the character of the arguments used by the Federalists against the Virginia Resolutions. Almost all of the Federalist appeals were grounded upon the declaration that the Republicans were seeking a dissolution of the Union, a charge which the Republicans as earnestly denied.[1] In their zeal against Republicans the federalists did not distinguish between opposition to the policy of the federal administration and resistance to the federal government. That doughty old warrior, Daniel Morgan, issued an appeal to his fellow-citizens: "My God! can it be possible! that a body, supposed to be collected from the wisdom and virtue of the State, convened to deliberate for its honor and advantage, and to coöperate with the General Government in maintaining the independence, union, and constitution thereof, against foreign influence and intrigue, should so far lose sight of that object as to attempt to foment divisions, create alarms, paralize the measures of defense, and, in short, render abortive every prudent and wise exertion? Had an angel predicted this some years ago, it would not have gained belief—yet it is too evident now to need testimony. Attempts have been made to separate us from our government; they are daily making; and I am sorry to say, with too much success. Again I say, my fellow-citizens, support our government, do not support in your elections anyone who is not friendly thereto." [2]

The Republicans throughout the campaign were upon the defensive. In the main they were content to deny any knowledge of a desire for disunion, to inveigh against the Alien and Sedition Laws, and to point to the resolutions of the legislature as a conclusive answer to all the Federalist attacks.[3] Incidentally in the course of these arguments the remedial features of the Virginia Resolutions, the one portion of them which had not been passed upon by the people the preceding year, received much attention.

The result of the elections in 1799 was a decided triumph for the Republicans, the slight gain made by the Federalists being not at all commensurate with the exertions which they put forth. Under the circumstances this result indicated that the people of Virginia upon second consideration approved of their own verdict of the preceding year regarding the constitutionality and expediency of the Alien and Sedition Laws and also of the remedy for those laws which their legislature had formulated.

[1] *The Virginia Argus*, April 12, 1799. A. A. S.
[2] *Columbian Mirror*, April 18, 1799. H. U.
[3] *The Examiner* (Richmond), March 29, 1799. H. U.

When the Virginia legislature met, the replies of the other states were referred to a committee, of which Madison was chairman. The report of that committee,[1] since known as Madison's *Report*, after carefully considering each of the resolutions of the preceding year, recommended a reaffirmation of them. This action was taken after the counter-resolutions offered by the Federalist minority had been voted down by a vote of ninety-eight to fifty-seven. The vote may be regarded as a fair approximation to the division of public opinion in Virginia.

The resolutions offered by the minority argued against the report of Madison's committee in its defence of both the protesting and the remedial features of the Virginia Resolutions of 1798.[2] But one peculiar feature of the minority resolutions is worthy of attention here. As has been already remarked more than once in the course of this article, the argument for the remedy hinted at in the Virginia Resolutions was grounded upon the doctrine that the states were parties to the compact which resulted in the federal union. Madison in his argument for the resolution which contained this doctrine was forced to consider the meaning of the term states. The conclusion arrived at was that the term *states* in the resolutions meant "the people composing those political societies, in their highest sovereign capacity."[3] Thus, according to Madison's further reasoning, the people of each state instead of the people of the United States *en masse*, were the parties to the Constitution. In the counter-resolutions offered by the Federalists this interpretation of the parties to the Constitution is accepted entirely. The conclusion which the Federalists drew from this premise, as applied to the particular question then at hand, was quite different from that drawn by Madison, but the agreement between them is significant, for it shows that many of the Federalists as well as the Republicans accepted the fundamental doctrine of state sovereignty.

Intrinsically the Kentucky Resolutions of 1799 and Madison's *Report* are equally important with the resolutions of 1798, or more so. In view of this fact it is much to be regretted that we know little as to what was thought of them outside of Virginia and Kentucky. The resolutions were widely copied, appearing in nearly all of the leading newspapers, but in nearly every instance that I have found, they appeared in the same issue with the announcement of the death of Washington. Sorrow so completely filled the public mind and the newspapers were so much taken up with details of his death, his

[1] Elliot's *Debates*, IV. 572 (Washington ed. 1836).

[2] *Proceedings of the Virginia Assembly on the Answers of Sundry States to their Resolutions*, 1800. Pamphlet, H. U. Pp. 100–102.

[3] Elliot's *Debates*, IV. 573 (Washington ed. 1836).

funeral, and the local commemorations, that the Kentucky Resolutions were overlooked. The resolutions of 1799 were not officially communicated to the other states and did not directly demand an answer. In form they were a solemn protest and in that light they seem to have been regarded. All the Federalist newspapers which made any comment upon them treated them as mere reiteration of those of the preceding year, failing to perceive that there was an important difference between the two sets.[1]

In Virginia, Madison's *Report* was greeted by the Republicans as a conclusive reply to the answers of the states and a complete vindication of the Virginia Resolutions.[2] It was widely circulated, and according to the Richmond *Examiner*, was of much service to the Republican cause in the elections held in the spring of 1800.[3] In New England the *Report* appears to have been little known. I have not been able to find any newspaper taking particular notice of it, or even giving it enough attention to enable its readers to obtain an idea of the arguments contained in the *Report*. The newspapers of the Middle States appear not to have given it more attention than those of New England, but there is some little evidence to show that it was quite well known in New York and Pennsylvania. An edition of it was published at Albany,[4] and Alexander Addison published at Philadelphia an elaborate reply to it.[5] In this reply Addison repeated with approval the reasoning of Madison, that the word *states* is equivalent to the expression *the people of each state*. From this premise he concluded, "It appearing then, that the people of the several states are the parties to the compact in the constitution, it will not follow that because the *parties* to a compact must be the judges whether it has been violated, the Legislatures of each state are the judges whether the constitution has been violated." Madison's argument would be true only upon the supposition that the state legislatures were the parties to the Constitution.[6] Addison does not seem to have perceived that his argument pushed a step further would have established the principle, that the people of Virginia, acting in their highest sovereign capacity, would have

[1] For examples see the *Salem Gazette*, December 27, 1799 (H. U.); the *Massachusetts Spy*, January 1, 1800 (A. A. S.); *Albany Centinel*, December 24, 1799 (H. U.); the *Spectator* (N. Y.), December 18, 1799 (H. U.); *Massachusetts Mercury*, December 24, 1799; *Kennebec Intelligencer*, January 18, 1800 (H. U.).

[2] *The Press* (Richmond), January 31, 1800. A. A. S.

[3] April 29, 1800.

[4] There is a copy of this edition in the Boston Public Library.

[5] *Analysis of the Report of the Committee of the Virginia Assembly, on the Proceedings of Sundry of the other States in Answer to their Resolutions.* By Alexander Addison. Philadelphia, 1800. Pamphlet, B. A.

[6] Pp. 6–8.

the right to judge for themselves whether the constitutional compact had been violated. Addison was concerned only to prove that the remedy hinted at by the third Virginia resolution and Madison's defense of it were incorrect. In this he succeeded beyond all question, but at the same time he unwittingly supplied one piece of conclusive evidence that many of the Federalists saw nothing out of the way in agreeing with their Republican opponents in the fundamental doctrine of the Virginia and Kentucky Resolutions, that the Union is the result of a compact to which the states are the parties.

It only remains to add a few words upon one important question. How far were the Virginia and Kentucky Resolutions influential in determining the presidential election of 1800? It has been often asserted that the principles of these resolutions were accepted by the American people in that election. Unless one can show by documentary evidence, as I have tried to do for the discussions of 1799, that these resolutions were discussed in the campaign of 1800 and their principles clearly made an issue, this amounts to nothing more than assertion. I have not been able to find any such documentary evidence. Invective against the Alien and Sedition Laws can be found in great plenty, but of direct allusions to the Virginia and Kentucky Resolutions or to their constitutional doctrines, I can find outside of Virginia only the very little that has been indicated in the two preceding paragraphs. From this evidence I am forced to conclude that the verdict of 1800, while a conclusive endorsement of the protest of the Virginia and Kentucky Resolutions, was not, so far as can be shown, an endorsement of either the remedy hinted at or the principles upon which it was founded. In a word, the remedy and its principles were not an issue in that campaign.

FRANK MALOY ANDERSON.

APPENDIX.

For contemporary opinion of the Resolutions of 1798, Elliot's *Debates* (IV. 558–565), contains only the replies sent by six state legislatures and the Senate of New York to Virginia. The collection fails to represent adequately even the opinion of the state legislatures, since it does not include the replies sent to Kentucky and the resolutions which in several states were adopted by one or both houses of the legislature but not officially transmitted to Virginia and Kentucky. So far as I know no attempt has ever yet been made to supply the omissions in Elliot's collection. The following constitute all of the necessary supplement which I have been able to

find, except the replies of the Rhode Island and Vermont legislatures to Kentucky; the former is identical with its reply to Virginia, save in the matter of name and date; the latter has already been published in the *Records of the Governor of the State of Vermont*, IV. 526–529. All of the legislative documents following, except C, are printed from certified copies of the legislative journals.

A. Replies to the Kentucky Resolutions of 1798.

Report concurred in by the Maryland House of Delegates, December 28, 1798.

The committee to whom were referred the resolutions of the legislature of Kentucky report, that they have taken the same under their consideration, and are of opinion that the said resolutions contain sentiments and opinions unwarranted by the Constitution of the United States, and the several acts of congress to which they refer; that said resolutions are highly improper, and ought not to be acceded to by the legislature of this state. (*Report of the Votes and Proceedings of the House of Delegates of the State of Maryland at November Session, 1798.*)

Resolutions of the House of Representatives of Pennsylvania, adopted February 9, 1799.

Resolved, That in the opinion of this House the people of the United States have vested in their President and Congress, as well the right and power of determining on the intent and construction of the constitution, as on the ordinary subjects of legislation, and the defence of the Union; and have committed to the supreme judiciary of the nation the high authority of ultimately and conclusively deciding upon the constitutionality of all legislative acts. The constitution does not contemplate, as vested or residing in the Legislatures of the several states, any right or power of declaring that any act of the general government "is not law, but is altogether void, and of no effect;" and this House considers such declaration as a revolutionary measure, destructive of the purest principles of our State and national compacts.

That it is with deep concern this House observes, in any section of our country, a disposition so hostile to her peace and dignity, as that which appears to have dictated the resolutions of the Legislature of Kentucky. Questions of so much delicacy and magnitude might have been agitated in a manner more conformable to the character of an enlightened people, flourishing under a government adopted by themselves, and administered by the men of their choice.

That this House view, as particularly inauspicious to the general principles of liberty and good government, the formal declaration by a legislative body, "that confidence is every where the parent of despotism, and that free governments are founded in jealousy." The prevalence of such an opinion cuts asunder all the endearing relations in life, and renews, in the field of science and amity, the savage scenes of darker ages. Governments truly republican and free are eminently founded on opinion and confidence; their execution is committed to representatives, selected by voluntary preference, and exalted by a knowledge of their virtues and their talents. No portion of the people can assume the province of the

whole, nor resist the expression of its combined will. This House therefore protests against principles, calculated only to check the spirit of confidence, and overwhelm with dismay the lovers of peace, liberty and order.

That this House consider the laws of the United States, which are the subjects of so much complaint, as just rules of civil conduct, and as component parts of a system of defence against the aggressions of a nation, aiming at the dominion of the world—conducting her attacks more by the arts of intrigue, than by her skill in arms—never striking, until she has deeply wounded or destroyed the confidence of a people in their government—and, in fact, subduing more by the infamous aids of seduction, than by the strength of her numerous legions. The sedition and alien acts this House conceive contain nothing terrifying, but to the flagitious and designing. Under the former, no criminality can be infered or punishment inflicted, but for writing, printing, uttering, or publishing false, scandalous and malicious aspersions against the government, either House of Congress, or the President of the United States, with an intent to defame and bring them into contempt. Under the latter, the citizens of the United States have not any thing more to fear, inasmuch as its operation will only remove foreigners, whose views and conduct are inimical to a government, instituted only for the protection and benefit of the citizens of the United States, and others, whose quiet and submission give them some claim to the blessing. Yet these laws are subjects of loud complaint. But this House forbears an examination into the cause, and only expresses its surprise that such an opposition to them exists! Our country's dearest interest demands every where unanimity and harmony in her councils, and this House is unable to discover any means more favourable to those important objects, than confidence in the wise and honest labours of those, in whose hands is reposed the sacred charge of preserving her peace and independence. The voice of the greater number the constitution declares shall pronounce the national will; but in the opinion of this House the provision is vain, unless it be followed by the unfeigned and practical acquiescence of the minor part. Loud and concerted appeals to the passions of the community are calculated to produce discussions more boisterous than wise, and effects more violent than useful. Our prayer therefore is, that our country may be saved from foreign war and domestic strife.

That it is the opinion of this House, that it ought not to concur in the design of the resolutions of the Legislature of Kentucky.

On motion of Mr. Kelly, seconded by Mr. Strickler,

Resolved, That the foregoing resolution be signed by the Speaker, and that the Governor be requested to transmit the same to the Governor of Kentucky. (*Journal of the House of Representatives of the Commonwealth of Pennsylvania*, Vol. IX., Philadelphia, 1799, pp. 198–200.)

Resolutions of the Delaware Legislature.

Resolved by the Senate and House of Representatives of the State of Delaware, That the resolutions from the State of Kentucky are a very unjustifiable interference with the General Government and Constituted Authorities of the United States, and of dangerous tendency, and therefore not a fit subject for the further consideration of this General Assembly.

Resolved That the above resolution be Signed by the Speaker of the Senate, and by the Speaker of the House of Representatives, and that the Governor of this State be requested to forward the same to the Governor

of the State of Kentucky. (*Journal of the Senate*, session begun January 1, 1799, p. 43. Text differing slightly from that given by Elliot.)

The following is an extract from the message of Governor Daniel Rogers of Delaware, submitted to the General Assembly of the State on January 7, 1799. It was not known to me at the time of publication of the previous article.

You will also herewith receive other resolutions of a very different tendency, transmitted to me by his Excellency the Governor of the State of Kentucky. These resolutions seem to me, both by their language and object, to assume a form extremely hostile to the peace and happiness of the United States. According to my understanding, the Legislature of that State undertake to exercise a power not vested in them, but which is expressly delegated to another tribunal. If the laws of which they complain are unconstitutional, it belongs to the Judiciary, and not to any Legislature to declare them to be so. As well may the Legislature of Kentucky or of any other State decide upon all and every other law of Congress. And if a measure of this kind is to be resorted to on every occasion, when a law becomes disagreeable to a particular State, however necessary it may be for the good of the whole, the Constitution, which was a "result of a spirit of amity and of mutual deference and concession" will soon become a shield to the fractious and discontented, and instead of promoting "the lasting welfare of our country" will involve us in disputes which may finally terminate in our utter ruin. It is expressly declared in the fourth article "that the Constitution and the laws of the United States, which shall be made in pursuance thereof, shall be the supreme law of the land," and in the third article "that the Judicial power shall extend to all cases in Law and Equity, arising under the Constitution and the laws of the United States, etc."

Hence it is evident that there is a proper authority to decide upon every Act of Congress, without the interference of the Legislature of any State, and that it is as unconstitutional in a Legislature to assume a Judicial Power as it would be in Congress to enact a law not warranted by the Constitution. (*Journal of the Senate.*)

Resolutions of the Connecticut General Assembly.

Resolved that the attempt to form a combination of the Legislatures of the several states for the avowed purpose of controuling the measures of the Government is foreign to the duties of the State Legislatures; Hostile to the existance of our national Union, and opposed to the principles of the Constitution; with these impressions this Assembly doth deeply regret that a spirit should Exist in the Legislature of any State capable of dictating Resolutions like those now under consideration; Resolutions calculated to subvert the Constitution and to introduce discord and anarchy. were this Assembly permitted to decide on the Measures of the General Government, they would declare the Acts against which the aforesaid Resolutions are particularly aimed, strictly Constitutional, but it is sufficient to remark that the administration of the Government meets their entire approbation, and that the Alien, and Sedition Acts are wisely calculated among others, to establish Justice, insure domestic tranquility, provide for the common defence, promote the General welfare, and secure the blessings of Liberty to themselves, and their posterity And therefore this Assembly doth refuse to concur with

the Legislature of Kentucky in promoting any of the Objects attempted by the aforesaid Resolutions;

And it is further Resolved That the Secretary of this State transmit a Copy of the foregoing Resolution to the Secretary of the State of Kentucky with a request that the same be communicated to the Legislature of said State. (MS. Records of the State of Connecticut, Vol. VI., 1797–1801, Session of May, 1799, p. 31.)

B. Replies to the Virginia Resolutions of 1798.

Report concurred in and Resolution adopted by the Maryland House of Delegates, January 16, 1799, and by the Senate, January 19, 1799.

The Committee to whom were referred the resolutions from the legislature of Virginia, respecting the alien and sedition laws passed at the last session of congress, report, that they have had the same under their most serious consideration, and after mature deliberation declare it as their decided opinion, that no state government, by a legislative act, is competent to declare an act of the federal government unconstitutional and void, it being an improper interference with that jurisdiction, which is exclusively vested in the courts of the United States; independently of the above consideration, your committee, viewing the present crisis of affairs, believe it incumbent on them to express their opinion, that a recommendation to repeal the alien and sedition laws would be unwise and impolitic; they therefore submit to the house the propriety of adopting the following resolution:

Resolved, That the general assembly of Maryland highly disapprove of the sentiments and opinions contained in the resolutions of the legislature of Virginia, inasmuch as they contain the unwarrantable doctrine of the competency of a state government, by a legislative act, to declare an act of the federal government unconstitutional and void, and as they contain a request for our co-operation with them in obtaining a repeal of laws, which, at this crisis, we believe are wise and politic. (*Report of the Votes and Proceedings of the House of Delegates of the State of Maryland at November Session, 1798.*)

Resolution adopted by the House of Representatives of Pennsylvania, March 11, 1799.

Resolved, That as it is the opinion of this House that the principles contained in the resolutions of the Legislature of Virginia, relative to certain measures of the general government, are calculated to excite unwarrantable discontents, and to destroy the very existence of our government, they ought to be, and are hereby, rejected. (*Journal of the House of Representatives of the Commonwealth of Pennsylvania*, Vol. IX., Philadelphia, 1799, p. 289.)

C. Reply to both the Virginia and the Kentucky Resolutions of 1798.

Reply of the New York House of Representatives.

Whereas it appears to this House, that the right of deciding on the constitutionality of all laws passed by the Congress of the United States,

appertains to the judiciary department—And whereas the assumption of that right is unwarrantable, and has a direct tendency to destroy the independence of the General Government—And whereas this House disclaims the power which is assumed in and by the Legislatures of the States of Kentucky and Virginia of the sixteenth of November and the twenty-fourth of December last of questioning in a legislative capacity either the expediency or constitutionality therein referred to: therefore

Resolved, That the Committee of the whole House be discharged from any further consideration of the message of his excellency the Governor of the twelfth day of January last, and the said resolutions which accompany the same. (*Albany Centinel*, February 19, 1799. H. U.).

D. Protest of the Vermont Minority.

Tuesday, the 5th of November, 1799. 9 o'clock, A. M.

. . . . . .

Mr. Hay laid before the House a statement of the reasons which influenced the minority, in the votes for passing the resolutions in answer to the resolutions of the states of Virginia and Kentucky, which were read as followeth, to wit.

We, the undersigned, being a part of the fifty, who refused their assent to the acceptance of the reports, recommended by the grand committee of the Legislature to this House, on the Virginia and Kentucky resolutions, respecting the acts commonly known by the titles of the "alien and sedition bill," do assign the following, as some of the reasons which occasioned our dissent.

Because, although we zealously urged at an early period of the session, and again earnestly solicited, when this important business was last before us, that all the official papers which had been presented to the House on this subject, be printed for the use of the members, previous to their entering into argument, or deciding on the question, this very reasonable request was refused, as will appear from the Journals. Notwithstanding which refusal, the report of this House, on the Kentucky resolutions, commences with declaring "*That we have* MATURELY *considered them.*"

Because, therefore, impressed with an opinion, that truth never shuns the light, and that sound argument never evades investigation, we could not believe that these resolutions, had time and opportunity been afforded for freely comparing each article with the others, would [have] appeared to the House, fraught with all the bad consequences attributed to them, in the two separate reports addressed to the Legislatures of these states.

Because, without going into an investigation of the constitutionality of what is generally termed the "Sedition Bill," we have ever been of an opinion, with that much and deservedly respected statesman, Mr. Marshal, (whose abilities and integrity have been doubted by no party, and whose spirited and patriotic defence of his country's rights, has been universally admired) that "it was calculated to create *unnecessarily*, discontents and jealousies, at a time, when our very existence as a nation may depend on our union."

Because, the "Alien Bill," as it is generally termed, grants to the President a power unknown to, and inconsistent with the general features of the constitution of the United States, through the whole whereof is displayed the divine principles of *mildness*, *freedom*, and *liberality*.

Because likewise, at the time it was passed, it could not refer to alien *enemies*, and must therefore, of course, involve alien *friends* in all the disastrous consequences, which may arise from this excess of power, unprecedented, we believe, on any similar occasion, in a free government.

It would here be improper to neglect observing, that it was but eleven days after this act passed, before another was enacted, which respected alien enemies, against which last act, the breath of discontent has never been known to be uttered.

Because, by the ninth section of the constitution of the United States, it is declared, "The *migration* or importation of such persons, as any of the states now existing shall think proper to admit, shall not be prohibited by Congress, prior to the year eighteen hundred and eight, but a tax or duty may be imposed on such *importation*, not exceeding ten dollars for each persons."

MIGRATION is an appropriate term, and we hesitate not to affirm, constantly implies a freedom of will in the person migrating, and is therefore contra-distinguished from importation, which must have had respect to slaves only; which distinction is clearly evinced to have been contemplated, in the above section of the constitution, for in the latter part thereof it is declared, "that a tax or duty, may be imposed by Congress, on the importation of such persons," while it is perfectly silent as to that tax, on the migration of persons.

Because, by this law, alien *friends*, and the President is empowered, it is true, *not to interdict their landing*, but to banish them as soon as he shall think proper, after they are landed, and inflict that severe punishment, without their being heard—without even the color of trial—without the pretence of their having committed any crime, except that very extraordinary one of being suspected—without, in short, assigning any reason why he does so. By which power, the intention of that part of the constitution, as far as it respects the migration of persons, though still in force, may absolutely and completely be defeated; and we therefore should esteem ourselves highly deficient in the duty we owe to our constituents—unfaithful to the sacred trust reposed in us by them—unmindful of the solemn oath we have taken, "Not to do, or consent to any act or thing whatever, that shall have a tendency to lessen, or abridge the rights and privileges of the people, as declared by the constitution of this state," were we to refrain from expressing our decided opinion that the act granting this power, is an undisguised breach of the constitution of the United States, because it deprives the states individually, of a privilege, which we think, clearly remains vested in each of them, by the first article of the ninth section of the constitution, compared with the twelfth article of the amendments thereto.

Because, in addition to the above reasons, we maintain a lively sense of the admonition of our darling, our beloved WASHINGTON, who, in his farewell address to the militia, on the western insurrection, proclaims this fact, and his opinion thereon, with a warmth worthy his truly patriotic bosom, that "The dispensation of justice, against offenders, belongs to civil magistrates, and let it ever be our pride and our glory, to keep the sacred deposit there inviolated."

Because, we conceive that some of the expressions in the reports alluded to, are highly objectionable, of which we shall only mention two. In the report on the Virginia resolutions, is the following unequivical assertion; "It belongs not to state Legislatures to decide on the constitutionality of laws made by the general government."

Here we must observe, that the report came recommended for our acceptance, by the grand committee of the Legislature, with the words *deliberate or* between the words *to* and *decide;* but the prohibition of a state from deliberating 'on the constitutionality of the laws made by the general government,' appeared so radically erroneous and inconsistent, that a motion was made by one of the defenders of the report, as it now stands, to strike out the words '*deliberate or*,' which was agreed to without a dissenting voice, none of those who had voted for printing the official papers, having interfered in the debate.

While, therefore, we highly respect the abilities and precision of the majority of this House, we are compelled to declare, that in our opinion, this amendment renders, if possible, the assertion still more palpably preprosperous, by subjecting each individual state to a degree of humiliation, incalculably painful, and immoderately degrading. For as it appears clearly by the twelfth article of the amendments to the constitution, as has been before observed, that the states individually, compose one of the parties to the federal compact or constitution, it does of course follow, that each state must have an interest in that constitution being pure and inviolate.

By the report, as amended and adopted by the House, each state is tacitly permitted the wretched, despicable prerogative of deliberating through their Legislature, on the real or supposed infraction of a compact, in which they are highly interested. But when they have deliberated, there they must stop, for they cannot communicate their sentiments in the common way, because that must necessarily involve their decision on the question; but this is declared in the report, to be an unconstitutional assumption of power, 'not belonging to state Legislatures.'

As we cannot yield our assent to this new method of tantalizing Legislative bodies, we willingly and cheerfully relinquish to the honorable inventors, all the profit and honor which may arise from the discovery.

Because, each state in the union, is by this diminutive explanation of their rights, debarred from a privilege, not only daily exercised by individual citizens, but in no instance attempted to be denied to them by the great legislative body of the union. As a proof of which we refer to the report of the committee of Congress, to whom was referred the memorials and petitions complaining of the act entitled 'An act concerning aliens,' on the twenty-fifth of February last, who admit in their report, that the memorialists declare this act to be unconstitutional, oppressive, and impolitic, 'and that some of the petitions are conceived in a style of vehement and acrimonious remonstrance,' but not a lisp of blame leaks out from this committee because the petitioners gave their decision, against the constitutionality of this law. From which it appears to us, that the report of this house voluntarily, though we are far from thinking intentionally, sacrifices a valuable prerogative of this state, not expected, much less demanded by the government of the union.

Let it not be supposed, that in advocating the power of each state to decide on the constitutionality of some laws of the union, we mean to extend that right to any laws, which do not infringe on the powers reserved to the states, by the twelfth article of the amendments to the constitution. We cannot, therefore, be charged with an intent to justify an opposition, in any manner or form whatever, to the operation of any act of the union. That we conceive to be rebellion, punishable by the courts of the United States.

Because, in the latter part of the report on the Kentucky resolutions,

the term JEALOUSY, which is therein affirmed 'to be the foundation of a free government,' is stigmatized in the report, 'as the meanest passion of narrow minds,' and a suggestion in our opinion ungenerous, is warmed in immediately afterwards, the intention of which, without entering deeply into the spirit of innuendoes, cannot be well misunderstood.

Whether jealousy, in a political sense, be a virtue or a vice, depends, we conceive, on the object by which it is produced, and the extent to which it is carried. As a proof of this, we will once more quote an admonition of our illustrious Washington, in his farewell address to his fellow-citizens. 'Against the insidious wiles of foreign influence (says he) I conjure you to believe me fellow-citizens, the jealousy of a free people ought constantly to be awake.'

But from this part of the report we were compelled to dissent for another reason, still more cogent, for by our consent, we should have acknowledged that the great body of our general constituents, had justly incurred the obloquy of possessing 'the meanest passion of narrow minds.'

In a late address of thanks to his Excellency the Governor, to which this House unanimously concurred, we say, 'That our constituents entertain too high a sense, are too JEALOUS of their own rights, ever to infringe wantonly, or intentionally, on those of any friendly nation.' From which it follows, that either this House entertained a most ignominious and disrespectful opinion of their constituents—that what is virtuous in them, is vicious in the Legislature of Kentucky—or that the explanation of the term *jealous*, in the report to which we have given our dissent, as applied to the subject of the Kentucky resolutions is altogether erroneous, ungenerous, and unfounded. The last of which three propositions, is the only one of them to which we could or can give our assent.

And lastly, we assign as a principal reason of our dissent, *because* we believe that the most pressing of our social duties, as citizens of the union, is to guard with a watchful scrupulosity, against the smallest breech of our federal constitution, to which we look up with admiration, with pleasure and respect, as the great and impregnable bulwark of [if] properly defended, of our political salvation.—(*Journal of the General Assembly of the State of Vermont*, October, 1799, pp. 148–152).